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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10-90; DA 13-1112]

Wireline Competition Bureau Seeks Comment on Options to Promote Rural Broadband in Rate-Of-Return Areas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Wireline Competition Bureau seeks comment on options to promote the availability of modern voice and broadband-capable networks in rural areas served by rate-of-return carriers. In particular, the Bureau seeks comment on two possible frameworks that could provide rate-of-return carriers with additional incentives to efficiently advance broadband deployment.

DATES: Comments are due on or before June 17, 2013 and reply comments are due on or before July 15, 2013.

ADDRESSES: Interested parties may file comments on or before June 17, 2013 and reply comments on or before July 15, 2013. All pleadings are to reference **WC Docket No. 10-90**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies, by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing.
- **People with Disabilities:** To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to

fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Ted Burmeister, Wireline Competition Bureau at (202) 418-7389 or TTY (202) 418-0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Wireline Competition Bureau's Public Notice (Notice) in WC Docket No. 10-90; DA 13-1112, released May 16, 2013. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone (800) 378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via Internet at <http://www.bcpweb.com>.

1. By this Public Notice, the Wireline Competition Bureau (Bureau) seeks comment on options to promote the availability of modern voice and broadband-capable networks in rural areas served by rate-of-return carriers. In particular, we seek comment on two possible frameworks that could provide rate-of-return carriers with additional incentives to efficiently advance broadband deployment. First, rate-of-return carriers have urged the Commission to take steps to make universal service fund support available to support broadband lines even where their consumers choose not to purchase voice telephony service. To that end, we seek additional targeted comment on several aspects of a proposal made by the rural carrier associations regarding changes to the existing framework set forth in the Commission's rules to make support available for network infrastructure that provides standalone broadband service. Second, we seek comment on facilitating rate-of-return carriers' voluntary participation in Connect America Phase II. Connect America Phase II will feature clearly defined support amounts for a defined period of time along with specific service deployment obligations. Certain rate-of-return carriers may find advantages to participating in Connect America Phase II and seek to opt in to this support mechanism. Recognizing that

rate of return carriers already have the option of voluntary conversion to price cap regulation, we seek comment what steps we could take to facilitate such conversions and other issues related to the provision of Connect America Fund Phase II support to rate-of-return carriers.

A. Rural Association Proposal for Standalone Broadband Lines

2. The rural carrier associations have advocated for a “Connect America Fund that supports broadband-capable networks that enable advanced communications and enhanced consumer choice in all rural areas.” Of course, as the rural carrier associations have acknowledged in other contexts, existing universal service support for rate-of-return carriers supports such networks, and indeed, under the USF/ICC Transformation Order, 76 FR 73830, November 29, 2011, carriers are required to deploy broadband-capable infrastructure as a condition of receiving such support. The rural carrier associations have noted that “[t]he Order adopts a number of broadband-related public interest obligations for ETCs, including RLECs[,] . . . [including a] requirement[] that RLECs offer broadband services meeting minimum speed and latency requirements upon ‘reasonable request’.” The rural carrier associations suggest that the Commission should provide high-cost support for standalone broadband loops provided by rate-of-return carriers to further advance this goal.

3. Today, a rate-of-return carrier may provide broadband transmission in one of two ways: over a loop that provides both voice and broadband, or over a standalone broadband transmission loop. However, universal service support—in the form of High-Cost Loop Support (“HCLS”) and Interstate Common Line Support (“ICLS”)—is available for a broadband-capable loop provided by a rate-of-return carrier only if the end user customer purchases voice service. When the loop is used to deliver both voice and broadband transmission services on a Title II basis, the loop is considered a “joint use” loop. Under current Commission rules, the costs of that loop are considered regulated costs, with most of those costs allocated to the intrastate jurisdiction. HCLS and ICLS provide support for interstate and intrastate loop costs. The costs of a loop are only recovered once under the Commission’s cost allocation and pricing procedures. Loop costs associated with joint-use facilities are allocated between the state and federal jurisdictions on a 75/25 percent basis. These joint-use loops may receive HCLS and ICLS. The costs of these joint-use facilities, therefore, are recovered through a combination of intrastate end user charges for

voice service, interstate charges (such as the subscriber line charge) and universal service support.

Typically, the only costs recovered through the special access tariff for the broadband transmission service are the incremental costs associated with making the loop broadband-capable. In contrast, if the loop only is used to deliver Title II broadband transmission service, and not voice, all of the costs associated with that loop are jurisdictionally interstate and are allocated to special access, and the underlying broadband transmission is tariffed as special access. Broadly speaking, 100 percent of line costs associated with special access services are directly assigned to either the interstate or intrastate jurisdiction, dependent on the jurisdictional usage of the line. Special access costs (loop and other incremental costs) are recovered in the appropriate jurisdiction through tariffed rates for the involved services without the benefit of any universal service support. See generally 47 CFR parts 36 and 69. There is no universal service support mechanism for costs associated with special access provided by rate-of-return carriers. The rural carrier associations contend this lack of support for standalone broadband transmission service in high cost areas contributes to a significant variance in the rates consumers pay for broadband bundled with voice service compared to standalone broadband.

4. The Commission originally sought comment on this proposal in the USF/ICC Transformation Order FNPRM, 76 FR 73830, November 29, 2011 and 76 FR 78384, December 16, 2011, where it inquired about the legal and policy implications to providing USF support for lines where the end user customer does not subscribe to voice service from the eligible telecommunications carrier (ETC), including the monetary impact on the Connect America Fund if the Commission were to provide support for standalone broadband provided by rate-of-return carriers. The Commission also inquired about what rule changes would help provide appropriate incentives for investment in broadband-capable networks, while limiting unrestrained growth in support provided to rate-of-return carriers.

5. Since that time, the rural associations have made additional filings regarding this matter, arguing, among other things, that providing support for standalone broadband would promote broadband adoption and competition in voice services. First, the rural associations suggest that the Commission should “consider technical fixes to its rules that would permit loop costs to remain in the Common Line pool (and thus eligible for USF cost recovery) even where a consumer declines to take an offer of voice telephony and instead elects only to take broadband service from an RLEC.” The rural associations argue

that “[s]uch simple part 69 rule changes are needed to fulfill the express and plainly stated intent of the Commission’s reform order, and . . . allow consumers in rural areas to have the same choices as those in urban areas with respect to their communications services.” What specific part 69 rule changes would be required? Are any other rule changes necessary? What is the near-term impact to the HCLS and ICLS mechanisms? Would making these modifications to the Commission’s rules change the HCLS allocation among carriers? Would such changes increase ICLS support?

6. We also invite interested parties to comment on several issues related to establishing separate loop categories to account for joint-use lines and standalone broadband lines. First, we invite parties to comment on whether there are definitional issues relating to Part 69 implementation that would need to be addressed to define rate elements necessary to offer standalone broadband service. Parties should address whether a loop element and a port element structure similar to the structure currently used for joint-use loops should be used and, if so, how different speeds should be handled within the rate structure. For example, can speed differences be addressed through a circuit equipment/port charge while having a line rate that is uniform for all speeds? Parties should also address whether the Commission should create classes of standalone broadband, with the costs of certain standalone broadband transmission services remaining in the Common Line pool, while the costs associated with other broadband transmission services would not. If the Commission were to do so, how should it define the characteristics of the different classes? For example, should the Commission maintain a class of special access broadband transmission? As noted above, standalone broadband service is currently in the special access category. And, carriers have had significant flexibility in establishing special access rates. The pricing principles for the new loop Common Line service must be clear to avoid potential misuse, such as supporting special access services. We invite parties to comment on the need for cost allocation procedures to be used to establish the price of a standalone broadband loop offering. Commenters should address procedures for allocating direct, indirect, and overhead costs. Commenters should also discuss any revisions to the Commission’s rules required to implement any cost allocation procedures.

7. Second, the rural associations suggest that “[w]hile some of these issues require further analysis” a standalone broadband funding mechanism is ultimately necessary to “ensure that broadband is available at affordable, reasonably comparable rates for consumers in high-cost areas.” We seek comment

on how such a mechanism would impact providers' investment plans and service offerings, as well as consumer choices and rates. We invite commenters to provide data on the specific percentages of residential end users that currently purchase retail broadband Internet access without landline service in rural areas served by rate-of-return carriers and in rural areas served by price cap carriers. We also invite comment on how a standalone broadband funding mechanism could be structured. If implemented, how would a transition to such a mechanism work, and would there be an impact on the total amount of support received by rate-of-return carriers? How would such a mechanism be implemented within the overall high-cost Connect America Fund framework, which established a budget of "up to \$2 billion" annually for rate-of-return territories, including intercarrier compensation recovery? Would it make sense to limit support provided through such a mechanism, or to adopt such a mechanism in conjunction with overall limits on support?

B. Voluntary Election of Connect America Phase II Model-Based Support

8. Facilitating a path for carriers to opt in to Connect America Phase II, including through the existing process to convert to price cap regulation, is consistent with the Commission's longstanding goal of providing support to all carriers through incentive-based mechanisms. We seek comment on whether creating a more explicit voluntary pathway to model-based support would be an additional way to promote efficient new broadband deployment in rural rate-of-return areas.

9. In the USF/ICC Transformation Order, the Commission adopted the framework for the Connect America Fund Phase II, which will provide support in areas served by price cap carriers. While price cap conversion is generally available to carriers, the Commission did not specifically address the circumstance in which a rate-of-return carrier that is not affiliated with a price cap holding company would seek to participate in Connect America Phase II. The Commission decided that Phase II support should be based on the forward-looking costs of deploying voice and broadband-capable networks in high-cost areas, with support calculated at a granular area. The Commission delegated to the Bureau the authority to develop a model and establish support thresholds. Based on the support amounts derived from the model, the Commission will offer each price cap carrier, and any rate-of-return LEC affiliates of a price cap carrier, annual support for the five-year period in exchange for a commitment to offer a specified level of

service within that service territory. For all territories for which price cap LECs decline to make that commitment, the Commission will award ongoing support through a competitive bidding mechanism. At the end of the five-year Connect America Fund Phase II period, the Commission expects to distribute all Connect America Fund support in price cap areas pursuant to a market-based mechanism.

10. In adopting the framework for the Connect America Fund Phase II, the Commission did not explicitly address how this model might be applied to determine support amounts in non-price cap territories. We now seek to further develop the record on how Connect America Fund Phase II could be provided in areas that currently are served by rate-of-return carriers to provide additional incentives for deployment of broadband-capable networks.

11. We invite parties to comment on the advantages and disadvantages of this pathway, both from the perspective of potential recipients of support and for achievement of the Commission's overall goals for reform. In particular, parties should address the extent to which rate-of-return carriers would find it beneficial to receive Phase II support rather than the support provided by the current HCLS and ICLS programs. Would individual carriers conclude the potential benefits of receiving a steady, model-derived support amount for a multi-year period, combined with an incentive-based structure that allows carriers to capture the benefits of efficiency, are sufficient to pursue this option? We seek comment on how facilitating a transition for rate-of-return carriers to model-based support would impact providers' investment plans and service offerings, as well as consumer choices and rates.

12. Timing. Nothing in the USF/ICC Transformation Order precludes current rate-of-return carriers from electing to convert to price cap regulation in order to receive Connect America Phase II model-based support. Given that significant progress has been made on Phase II implementation, however, it may be unlikely that a rate-of-return carrier could complete the process of converting to price cap regulation before the Bureau adopts a cost model and specifies the amount of model-based support that will be offered to price cap carriers. We therefore focus on how a rate-of-return carrier might convert to price cap regulation and receive model-based support after Phase II is offered to the price cap carriers. Should there be a deadline for rate-of-return carriers to file for such a voluntary conversion to price caps in order to receive model-based support?

13. Amount of Support. We seek comment on the amount of support to be offered to future converts to price cap regulation under Connect America Fund Phase II. Because the funding threshold and “extremely high-cost” threshold will have been determined and model cost estimates for the converting carriers will be available at the time of the conversion, one option would be to provide the converting carrier with the level of support calculated by the model. We seek comment on this method for determining support for price cap converts.

14. Budgetary Impact. We seek comment on the monetary impact on the Connect America Fund of providing a voluntary path for current rate-of-return carriers to opt-in to model-based support, and how this might impact the Commission’s budget for price cap territories versus rate-of-return territories. To what extent would this option only be elected by carriers for whom model-based support is equal to or greater than their current support? How likely is it that some rate-of-return carriers may choose this voluntary path even if they would receive less support in the near term, for the advantage of having a steady universal service revenue stream for a defined period of years?

15. We also seek comment on the effect of a price cap conversion on high-cost loop support. We note that, in the USF/ICC Transformation Order, the Commission rebased the cap on HCLS to reflect that price cap carriers and their rate-of-return affiliates would be receiving support pursuant to Connect America and would no longer be eligible for HCLS. Consistent with this precedent, the Bureau proposes that HCLS should be similarly rebased if a rate-of-return carrier converts to price cap regulation in the future. The Bureau seeks comment on this proposal.

16. Commitment to Accept Model-Based Support. Existing price cap carriers will be provided an opportunity to make a state-level commitment for model-based support after the Bureau releases a public notice indicating the census blocks eligible for funding and how much Connect America Phase II support will be offered to them. We seek comment regarding whether new price cap regulated carriers should similarly be provided an opportunity to accept or decline model-based support, or if the act of becoming a price cap carrier effectively should be deemed an acceptance of support for the relevant census blocks. Would there be any instance in which a price cap conversion could be granted, and the converting carrier could be permitted to decline the support, which then could be assigned through

competitive bidding? Should rate-of-return carriers be permitted to decline model-determined support if that occurs before the time to finalize the census blocks that will be subject to bidding in the competitive process following the offer of state-level support to price cap carriers? Should carriers in this situation be required to elect support on a state-wide basis, if they have multiple study areas within a state, or should they be permitted to elect support on a study area basis? Are there any other issues relating to the process of accepting model-based support that would need to be resolved for new price cap converts?

17. Term for Connect America Phase II Support. The USF/ICC Transformation Order specifies that Connect America Phase II will last five years. We seek comment regarding whether carriers converting to price cap regulation after Connect America Phase II commences should receive Connect America Phase II support on the same time table as other price cap carriers. One option would be that the Commission would determine successor mechanisms for all carriers receiving Connect America Phase II support, regardless of when the carrier began receiving support. For example, if a rate-of-return carrier converted to price cap regulation at the end of year 3 of the Connect America Phase II, the carrier would only participate in Connect America Phase II for years 4 and 5. Transitioning from Connect America Phase II to any subsequent mechanisms for all areas at the same time will ensure that the market-based mechanisms anticipated by the Commission will have the widest applicable area, which in turn could maximize efficiencies. We seek comment on this proposal. Alternatively, should carriers that voluntarily elect to receive model-based support receive such support for a term of five years, commencing with the date they first receive such support? Or, should current rate-of-return carriers that voluntarily elect to receive model-based support be provided support for a period longer than five years, such as a period of time to coincide with the intercarrier compensation transition for rate-of-return carriers. We seek comment on these alternatives, as well as any other proposals for Connect America Phase II terms that parties may put forth in the record.

18. Service Obligations. Carriers receiving support pursuant to Connect America Fund Phase II will be subject to specific service obligations and reporting requirements to demonstrate compliance with those obligations. We seek comment on whether or how those obligations should be modified for carriers that convert to price cap regulation after the implementation of model-based support for current price cap carriers and their rate-of-return affiliates. One option would be for all service obligations to remain the

same for price cap converts as for current price cap carriers, except that the number of locations served with broadband could be adjusted on a sliding scale to reflect the shorter time for buildout. We seek comment on this proposal, and also invite commenters to suggest alternatives that would be consistent with the Commission's goals in establishing service obligations for Connect America Fund Phase II.

19. Alternatives to Price Cap Conversion. We also seek comment on an alternative to providing Phase II model-based support only to carriers who convert to price cap regulation, as discussed above. We ask parties to comment on whether the Commission should allow rate-of-return carriers to elect to receive model-based support in lieu of HCLS and ICLS, but otherwise remain regulated under rate-of-return regulation. Parties should address the extent to which this alternative would encourage or allow carriers to shift costs from the common line category to the special access category and the ability of, and the measures needed for, the Commission to monitor such activities. Parties should identify any rules that would need to be revised to implement this alternative, including any rule changes necessary to ensure that a carrier does not receive both Phase II support and support under the existing mechanisms for rate-of-return companies (*i.e.*, HCLS and ICLS). We also ask parties to address the matters discussed in the preceding paragraphs as they relate to this alternative approach.

C. Procedural Matters

1. Initial Regulatory Flexibility Act Analysis

20. The USF/ICC Transformation Order and FNPRM included an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. 603, exploring the potential impact on small entities of the Commission's proposal. We invite parties to file comments on the IRFA in light of this additional notice.

2. Initial Paperwork Reduction Act of 1995 Analysis

21. This document seeks comment on a potential new or revised information collection requirement. If the Commission adopts any new or revised information collection requirement, the Commission will publish a **separate** notice in the Federal Register inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,

see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

3. Filing Requirements

22. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- (1) All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

(2) Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

(3) U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

23. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

24. This matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b). In

proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte

presentations, and all attachments thereto, must be filed through the electronic comment filing system

available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

FEDERAL COMMUNICATIONS COMMISSION

Kimberly A. Scardino,
Division Chief, Telecommunications Access Policy Division
Wireline Competition Bureau.

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